Supreme Court, U.S.
FILED

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No. ---------- OFFICE OF THE CLERK

In The

Supreme Court of the United States

STATE OF NEW JERSEY,

Respondent,

v.

DOMINICK THERESA,

Petitioner,

Petition for a Writ of Certiorari to the
New Jersey Court of Appeal,
Appellate Division

Petition for a Writ of Certiorari

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August 20,1999

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QUESTION PRESENTED

This Court should issue a Writ of Certiorari to review the invalid Contempt charge from the denied Appellant Division decision. Which raises an important question to the general public importance under The Prevention Domestic Violence Act of 1990 and under all Restraining orders. This invalid Contempt charge which resulted and/or issued from an invalid Amended Temporary Restraining Order, which clearly shows it was inadequate of service, no date of service and no awareness to The Defendant to violate this new and/or invalid Amended Temporary Restraining order, in order to be in Contempt.

All the Complaints, Charges, Temporary, Amended and Final Orders where all Dismissed. Without a basement and foundation the Contempt conviction has no legal merits. This contempt should have been Dismissed. The general importance is that each and every new Restraining Order need to be served to be in Contempt.

PARTIES TO THE PROCEEDING BELOW

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Petition for a Writ of Certiorari

The Petitioner, Dominick Theresa prays that the court issue a Writ of Certiorari to review the judgment of the court of appeal for the state of New Jersey, Appellate Division, in this case.

OPINIONS BELOW

The decision of the Superior Court of the state of New Jersey Chancery Division for the county of Somerset is set forth at page (5a) of the Appendix.

The decision of the court of appeal of New Jersey, Appellate Division (Appendix 1a - 4a).

New Jersey Supreme Court denied Dominick Theresa's petition for review on May 26,1999 (Appendix 6a).

JURISDICTION

New Jersey Supreme Court denied review on May 26,1999. This Court has Jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTES INVOLVED

The Domestic Violence Act Chapter 25 with N.J.S.A. 2C: 25-17

Rule 5:7A Domestic Violence, Restraining Orders: Application.

N.J.S.A. 2C: 29-9 (b) Contempt: A person is guilty of a crime of the fourth degree if that person purposely or knowingly violates any provision in an order.

N.J.S.A. 2C:25-21(A)3 Arrest of alleged perpetrator and liability of Law Enforcement Officer: There is probable cause to believe that the person has violated N.J.S.A. 2C: 29-9 (b), and There is probable cause to believe that the person has been served with the Order alleged to have been violated.

STATATEMENT OF THE CASE

A. Facts

The Alleged Assault Complaint / Warrant on April 14, 1997 was Dismissed on January 14, 1998 [8a]. This Assault originated for a Temporary Restraining Order [T.R.O.]. on April 15, 1997(10a), Amended T.R.O. on April 17, 1997 (11a) and The final R.O. on May 8, 1997 and all orders where dismissed on June 4, 1998 [7a]. On April 20, 1997 a violation was alleged for a Contempt N.J.S.A. 2C: 29-9 (b) and harassment charge which was

from the invalid Amended Temporary Restraining Order (11a) during a chance meeting [9a] on April 19, 1997. The Contempt Trial was on July 24, 1997 and the harassment charge was dismissed (5a). Under The Domestic Violence Act the following Dismissals Constitutes why The Contempt should be Dismissed.

The Prima Facie Dismissals constitutes no final order and no protection under The Domestic Violence Act N.J.S.A. Chapter 25 and Rule 5:7A was never needed for The Defendant to be in Contempt of the invalid Amended T.R.O.

B. Proceeding below

The Appellate Division denied (3a) the Supplemental Brief with Exculpatory Evidence, proffer, the former witness affidavit and the Prima Facie Dismissals (7a,8a,10a,11a),which constituted no Final Order and no protection under The Domestic Violence Act Chapter 25 and Rule 5:7A was never needed for The Defendant to be in contempt. If the Exculpatory Evidence and the Final Dismissals of the orders, came before the contempt trial on July 24, 1997. Clearly, this contempt charge would have been dismissed. The alleged Assault/Warrant on April 14,1997 took nine [9] months to get heard and it got dismissed on January 14, 1998(8a).

This Contempt N.J.S.A. 2C: 29-9 (b) has all the merits for a Dismissal. The Plaintiff/State should not waste courts time over a unmeritorious Trivial matter as in State v. Wilmouth 302 N.J. Super 20 [app. Div. 1997].

The hypothesis, The building has no foundation and no basement! How can a floor stay?

REASONS FOR GRANTING THE WRIT

I. The invalid Contempt charge which resulted from an invalid Amended Temporary Restraining Order, with inadequate no date service.

This invalid Contempt charge N.J.S.A. 2C: 29-9 (b) which resulted and/or issued from an invalid Amended Temporary Restraining Order (11a), which clearly shows it was inadequate of service, no date of service and no awareness to The Defendant to violate this new and/or invalid Amended Temporary Restraining order, in order to be in Contempt. All the Complaints, Charges, Temporary, Amended and Final Orders, where all Dismissed (7a,8a,10a,11a) . Without a basement and foundation the Contempt conviction has no legal merits. This contempt should have been Dismissed. The general importance is that each and every new Restraining Order, need to be served first, in order to be in Contempt. Nevertheless, all of the elements of the offense alleged as the basis for the domestic violence must be proved. D.C. v T.H. 269 N.J. Super 458 (App Div. 1994).

II. The Domestic Violence Act and The Contempt Charge states a person has to be served with the Order to violate any Order.

N.J.S.A. 2C:25-21(A)3 states... Arrest of alleged perpetrator and liability of Law Enforcement Officer: There is probable cause to believe that the person has violated N.J.S.A. 2C: 29-9 (b), and There is probable cause to believe that the person has been served with the Order alleged to have been violated. The Constitutional of The State Statutes: Chapter 25 and Rule 5:7A, N.J.S.A. 2C:25-21(A)3, N.J.S.A. 2C: 29-9 (b) is Questioned, which clearly doesn't Convict anyone of Contempt if no protection was never needed of The Act,as all Final Order were Dismissed, and no date of service of the

Order (clearly no crime was committed) under The Act. Facts of law under The Act and under N.J.S.A. 2C:25-21(A)3 The Amended Temporary Restraining Order issued on April 17, 1997 (11a) it must show it was valided and served upon for The Defendant to be in Contempt on April 20,1997 (9a). As we all know, it clearly shows no date of service and/or served and valided upon and/or to The Defendant. Noble v. State ,248 Ind. 17, 238 N.E [2d] 651 [1968] The Supreme Court reversed conviction on the ground that there was no criminal intent.

CONCLUSION

This Court should issue a Writ of Certiorari to review the invalid Contempt charge from the denied Appellant Division decision.

Respectfully Submitted,

Dominick Theresa, Pro Se
(Petitioner)

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Appendix A

[filed July 24,1997]

SUPERIOR COURT
OF NEW JERSEY APPELLATE DIVISION

Docket No. A-000670-97T2
(Somerset County Super. Ct. Docket No. F0-18-000331-97)

STATE OF NEW JERSEY,
Plaintiff and Respondent,

v.

DOMINICK THERESA,
Defendant and Appellant,

Per Curiam

Defendant Dominick Theresa appeals from his conviction for contempt, N.J.S.A. 2C:29-9b, arising out of his violation of an amended temporary restraining order of April 17, 1997. Defendant was found not guilty of harassment, N.J.S.A. 2C: 33-4, and was sentenced on the contempt charge to a term of eighteen months probation. As a condition of probation, defendant was required to serve ten days in the Somerset County Jail as well as undergo a mental health examination and treatment. He was further ordered to have no further contact with the victim, his former wife, Mona Theresa [Mona] . We affirm.

Defendant and Mona have had a difficult relationship since their divorce in 1996. The background facts of their relationship is more specifically set forth in our opinion in Theresa v. Theresa, [A6334-96T3] decided May 26, 1998, and we see no need to repeat the details set forth in that opinion. The facts giving rise to the present offense are as follows. Following the issuance of the April 17,

1998, order, Mona while working at a store in the Bridgewater Mall, was approached by defendant who claimed that he had to speak to her about their son. Mona was surprised and testified that she felt "afraid, harassed and frightened." Although she spoke to defendant for a few minutes, she soon left the area. Defendant followed Mona informing her that if she did not drop the restraining order, "the court would take Nicky from both of them." Defendant confronted Mona while she was in an "indentation" in the wall; she appeared to be blocked by defendant.

Mona returned to work approximately ten minutes later. After yet another conversation with defendant, Mona again returned to the store and appeared, to one of her fellow employees, to be "very upset" and "near tears." She expressed fear for her son and concerned about what defendant might do. The next day Mona filed a complaint charging contempt.

Defendant did not testify but urged in his summation that the encounter between him and Mona was a "chance" meeting.

Following the trial in the Family Part, defendant was convicted of the contempt charge and acquitted of the harassment charge. The judge determined that Mona's testimony was credible and despite the dismissal of numerous restraining orders by Mona, defendant was guilty of the contempt.

On appeal, defendant raises the following issues:

POINT I

THE TRIAL JUDGE CLEARLY ERRED AS THE STATE FAILED TO SUPPORT THE BURDEN OF PROVE [SIC] OF CONTEMPT CHARGE. EACH ELEMENT WAS CLEARLY NOT PROVED BEYOND A REASONABLE DOUBT. THE STATE FAILED TO PROVE THE DEFENDANT PURPOSELY AND KNOWINGLY VIOLATED THE AMENDED T.R.O. DURING A CHANCE MEETING AND SHOULD BE REVERSED.

POINT II

EVIDENCE IN THE RECORD CLEARLY SHOWS THAT IN THE TRIAL JUDGE [SIC] FINDINGS OF THE FACTS AND GUIDELINES WITH THE AGGRAVATING AND MITIGATING FACTORS DIDN'T APPLY TO THE DEFENDANT'S CASE TO FIND THE DEFENDANT GUILTY.

THE DEFENDANT WAS CLEARLY NO RISK TO COMMIT ANOTHER CRIME AND SHOULD BE REVERSED.

POINT III

THE INCORRECT AND OVER THE MAXIMUM SENTENCING AND PROBATION GUIDELINES WHERE [SIC] USED WITH DEFENDANT [SIC] CONTEMPT CHARGE FROM A [SIC] AMENDED TEMPORARY RESTAINING ORDER AND DEFENDANT NEVER ANY CRIMINAL MISDEMEANOR RECORD. THE TRIAL JUDGE CLEARLY FAILED TO EXPRESS ALL THE CONDIDTIONS WITH PROBATION AND SHOULD BE REVERSED.

POINT IV

THE DEFENDANT [SIC] CONTEMPT SHOULD HAVE BEEN DISMISSED UPON THE DISMISSAL OF THE CHANGE MEETING HARASSMENT CHARGE. THE STATE WITNESS MONA THERESA WAITED UNTIL THE NEXT DAY TO CALL POLICE, CLEARLY SHOWS [SIC] A SUMMONS SHOULD HAVE BEEN ISSUED, NOT A WARRANT.

POINT V

THE TRIAL JUDGE ACKNOWLEDGED THERE WAS A CHANCE MEETING AND VISITATION WHERE COMMUNICATED AS THE COURT STATED THE DEFENDANT ALSO HAD A T.R.O. AS A PRIOR ABUSE [SIC]. M. THERESA PROVIDED THE DEFENDANT CONCERN WITH THIS CONTEMPT, WAS THE LAW ENFORCEMENT FUTURE AS THE TRIAL JUDGE PROVIDED TO SENTENCE [SIC].

We have carefully reviewed the record in this matter, considered defendant's argument and conclude that they are without merit.[1] R. 2:11-3[e] [2]. The judge carefully weighed Mona's credibility and concluded that defendant had, indeed, violated the restraining order. We defer to the judge's findings of fact especially where, as here,

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[1]At oral argument, defendant presented to us a motion "for the attached supplemental brief." The motion, while referring to a supplemental brief, actually seeks to supplement the record. We have carefully considered the motion and deny it.

they are supported by sufficient credible evidence, see Cohen v.Radio Electronics Officers Union, Dist. 3, 146 N.J. 140, 157 [1996], and the judge has the opportunity to observe the witnesses and determine their credibility, see Bonnco Petrol, Inc. v. Epstein, 115 N.J. 599, 607 [1989].

Defendant argues that his contact with Mona in the mall was not a violation of the "no contact" restraint set forth in the restraining order but was the type of de minimus contact addressed by us in State v. Wilmouth, 302 N.J. Super. 20 [App. Div. 1997. Defendant misreads Wilmouth. There we held that a whether a father would see his child tomorrow did not violate the "no contact" restriction. Id. at 585-86. Here, defendant followed Mona to her place of employment, threatened her regarding their child if she did not dismiss the restraining order, and caused legitimate fear and fright as a result of the confrontation. This conduct was not the "trivial, non-actionable event" recognized in Wilmouth. Defendant's conduct was designed to cause exactly the type of reaction proscribed by the restraining order.

Finally, defendant's sentence was more than warranted under the circumstances. The judge correctly applied the aggravating factors and found that no mitigating factors applied. We see no basis to disturb the sentence.

Affirmed.

s/ Emille R. Cox
Clerk of the Appellate Division

Appendix B

[filed July 24,1997]

SUPERIOR COURT
OF THE STATE OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
COUNTY OF SOMERSET

Docket No. F0-18-000331-97
(Amended T. R.O. Docket No. FV-18-1225-97)
(Complaint / Warrant for T.R.O. No. W-1997-000216-1806)

STATE OF NEW JERSEY,

Plaintiff,

v.

DOMINICK THERESA,

Defendant,

It is, therefore, on 7/24/97 ordered and adjudged that:
COUNT 2 Harassment defendant found not guilty.

COUNT 1 Contempt guilty with probation for 18 months with conditions. Probation supervisory fee imposed $20 per month.

It is further ordered: Remanded to jail for 10 days, Mental Health Evaluation, no contact with victim, violent crimes compensation board assessment $50, safe and secure communities program assessment $75 and aggravating factors # 3 and 9 imposed with no mitigating factors.

s/ The Honorable Victor Ashrafi, J.S.C.
(Somerset County Superior Court)

Appendix C

[filed May 26,1999]

IN THE SUPREME COURT OF NEW JERSEY

Docket No. 47,332
(App. Div. Docket No. A-000670-97T2)

STATE OF NEW JERSEY,

Respondent,

v.

DOMINICK THERESA,

Appellant.

Appellant's petition for certification of the judgement in A-670-97 is denied.

s/ The Honorable Deborah T. Poritz
Chief Justice

Appendix D

[Filed June 4, 1998]

SUPERIOR COURT
OF THE STATE OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
COUNTY OF SOMERSET

(R.O.) Docket No. F0-18-000331-97

MONA LEE THERESA,

Plaintiff,

v.

DOMINICK THERESA,

Defendant,

ORDER OF DISMISSAL

It is hereby ordered on this 4 day of June,1998 that the Domestic Violence Complaint filed 4/14/97 is dismissed and the Final Restraining order dated 5/8/97. The Temporary Restraining Order dated 4/15/97 is vacated and all Amended F.R.O.'S issued subsequently.

s/ The Honorable Graham T. Ross, J.S.C.
Somerset County Superior Court

Appendix E

[Dated: January 14,1998]

BRIDGEWATER TWP.
OF THE STATE OF NEW JERSEY
COUNTY OF SOMERSET

Complaint / Warrant No. W-1997-000216-1806
(Complaint / Warrant for T.R.O. Docket No. FV-18-1225-97)

STATE OF NEW JERSEY,

Plaintiff,

v.

DOMINICK THERESA,

Defendant,

ORDER OF DISMISSAL

On April 14, 1997 the violation of Domestic Violence Assault N.J.S.A. 2C: 12-1A(1) to Mona Lee Theresa is Dismissed.

s/ The Honorable Robert J. Foley
(Bridgewater Twp. Somerset County)

Appendix F

[Dated: October 5, 1998]

AFFIDAVIT

(For Contempt Docket No. F0-18-000331-97)

Mona Theresa makes this Affidavit under oath:

I, Mona Theresa, the state former witness that I was not asked the right questions, by either parties during the July 24,1997 Contempt Trial. Upon this Affidavit that The Defendant, Dominick Theresa did not act, Purposely and Knowingly during the chance meeting on April 19,1997 to be in Contempt of the Amended Temporary Restraining Order.

s/ Mona Theresa
(state former witness)

Appendix G

[Dated: April 15, 1997]

SUPERIOR COURT
OF THE STATE OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
COUNTY OF SOMERSET

(T. R.O. Docket No. FV-18-1225-97)
(Complaint / Warrant for T.R.O. No. W-1997-000216-1806)

MONA LEE THERESA,

Plaintiff,

v.

DOMINICK THERESA,

Defendant,

(Only relevant parts from four pages are shown)

Temporary Restraining Order (T.R.O.) issued on April 15, 1997 with "Notice to Appear" for both The Plaintiff and The Defendant for a final hearing on April 17, 1997. (Either parties showed up on April 17, 1997 see Appendix H page 11a)

s/ The Honorable Victor Ashrafi, J.S.C.
(Somerset County Superior Court)

Appendix H

[Dated: April 17, 1997]

SUPERIOR COURT
OF THE STATE OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
COUNTY OF SOMERSET

(Amended T. R.O. Docket No. FV-18-1225-97)
(Complaint / Warrant for T.R.O. No. W-1997-000216-1806)

MONA LEE THERESA,

Plaintiff,

v.

DOMINICK THERESA,

Defendant,

(Only relevant parts from four pages are shown)

The Final hearing for the Temporary Restraining Order (T.R.O.) was on April 17, 1997. Both The Plaintiff and The Defendant was not present at the hearing, as the Temporary Restraining Order was Amended Sua Sponte by The Trial Judge to an Amended Temporary Restraining Order on April 17, 1997.

s/ The Honorable Victor Ashrafi, J.S.C.
(Somerset County Superior Court)

This newly Amended Temporary Restraining Order was never severed to The Defendant for awareness of this newly Amended signed order. Clearly the order shows inadequate, no date of service to The Defendant (this is shown at Page 4 in this original Amended order).